



US Army Corps
of Engineers
Portland District

SPECIAL PUBLIC NOTICE

PUBLIC NOTICE DATE: May 30, 1997

FINAL REGIONAL CONDITIONS, COASTAL ZONE MANAGEMENT CONSISTENCY DETERMINATIONS AND 401 WATER QUALITY CERTIFICATIONS FOR NATIONWIDE PERMITS IN THE STATE OF OREGON

This Special Public Notice concerns the adoption of regional conditions that will be used in the State of Oregon for the Nationwide Permits (NWP) that were announced as issued in the December 13, 1996 Federal Register. This notice also announces the status of Coastal Zone Consistency Determinations and Section 401 Water Quality Certifications for the NWPs in Oregon.

A potential permittee considering the use of a NWP must compare the proposed project's features with the NWP's requirements and national conditions of the NWP, the regional conditions, and whether or not the Section 401 Water Quality Certification and/or Coastal Zone Consistency Concurrence have been approved, denied, or partially approved. If the project is within the terms, national conditions, regional conditions, 401 Certification limits, and the Coastal Zone Certification Concurrence limits (for projects in the coastal zone), the permittee may proceed with the project subject to any notification requirements.

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I. BACKGROUND INFORMATION

A. APPLICABLE STATUTORY AUTHORITIES & GUIDANCE:

1. Section 10 of the Rivers and Harbors Act of 1899
2. Section 404 of the Clean Water Act

3. Guidance in 33 CFR 330 regarding expiration of the NWP, their reissuance, and the use of regional conditions

B. ACTIVITY DESCRIPTION: The NWPs authorize the conduct of certain categories of activities that require permits under Section 10 and Section 404, that are substantially similar in nature and can be accomplished with minimal environmental impacts, individually and cumulatively.

C. LOCATION: All Waters of the U.S. in the State of Oregon

D. ELIGIBILITY: The general public, including individuals and organizations; and Federal, State and local agencies.

E. PURPOSE: The purpose of this action is to announce the approval, by the Northwestern Division office of the U.S. Army Corps of Engineers, of regional conditions for the use of the NWPs in the State of Oregon. This notice also announces the status of the Section 401 Water Quality (WQ) Certifications for each of the NWPs by the Oregon Department of Environmental Quality (DEQ) for waters of the State, and by the Environmental Protection Agency (EPA) for waters on tribal lands and on lands with exclusive Federal jurisdiction. Finally, this notice announces the status of the Coastal Zone Management Plan (CZM) Concurrence Determinations by the Oregon Department of Land Conservation and Development (DLCD) for each of the NWPs.

F. ENVIRONMENTAL AND REGULATORY OVERVIEW

The U.S. Army Corps of Engineers (Corps) Headquarters proposed to issue, reissue, and modify the NWPs in a proposed rule published in the Federal Register on June 17, 1996. The Corps Portland District announced this in a Special Public Notice on June 26, 1996, with a correction notice on July 3, 1996 to announce the correct time and date for the scheduled public hearing in Washington, D.C. The Corps Portland District published an additional Special Public Notice on July 25, 1996 announcing the schedule for a regional public hearing in Seattle, WA. On December 13, 1996, the Corps Headquarters announced in the Federal Register, Part VII, the final NWPs issued for a five-year period. The NWPs became effective on February 11, 1997.

A December 20, 1996 Special Public Notice announced proposed regional conditions for Oregon. These proposed regional conditions were the result of a collaborative process among the Oregon Department of Land Conservation and Development (DLCD), the Oregon Department of Environmental Quality (DEQ), the U.S. Environmental Protection Agency (EPA), and the Corps Portland District. This Special Public Notice was issued on behalf of the collaborating agencies to obtain public comments on the proposed regional conditions, and to explain how the NWP program would operate within the State of Oregon. The collaborating agencies met and consulted with other Federal and State agency representatives in the development of the regional conditions. Comments were received from several public agencies and from the public, and these were considered in the formulation of the final proposed regional conditions. Final agency decisions on Section 401 Water Quality (WQ) Certifications and Coastal Zone Management Plan (CZM) Consistency Determinations have been received from the collaborating agencies. The Corps Portland District forwarded a recommended regional conditions to the Corps Northwestern Division, and received approval for those conditions on May 2, 1997.

The Section 401 WQ Certification and CZM Consistency Determination statements in this public notice take three forms: 1) “approved” for WQ Certification (and “concur” for CZM Consistency Determination); 2) “denied”; and 3) “partially denied”.

- “Approved” (or “concur”) means a project is authorized under the NWP if it meets the permit’s terms and conditions, including the applicable regional conditions. For such permits, Section 401 WQ

Certification and/or CZM Consistency Determination have been approved for all actions authorized by that NWP.

- “Denied” means that the 401 WQ Certification and/or CZM Consistency Determination have been denied for that NWP and all activities potentially authorized under that particular NWP. An individual 401 WQ Certification and/or CZM Consistency Determination, or waiver, is required before work can be done under the NWP.
- “Partially denied” means that the 401 WQ Certification, or CZM Consistency Determination, or both have been denied for some of the activities that could be authorized under that particular NWP. A discussion of these limitations is found after each NWP in their 401 WQ Certification and/or CZM Consistency Determination sections. An individual 401 WQ Certification and/or CZM Consistency Determination as appropriate, or waiver, is required before work can be done under the NWP if the proposed activity exceeds the limitations of the 401WQ and/or CZM approval.

Neither “denial” nor “partial denial” mean that the proposed project will not be permitted. It means the certifying agency has decided some projects require individual review and approval. Additional conditions and/or mitigation may be required with the individual certification.

G. ADDITIONAL INFORMATION

• ABBREAVIATIONS USED IN THIS SPECIAL PUBLIC NOTICE

401 Certification - Section 401 Water Quality Certification

Corps - U.S. Army Corps of Engineers

CZM - Coastal Zone Management (or CZM Plan)

DEQ - Oregon Department of Environmental Quality

DLCD - Oregon Department of Land Conservation & Development

DSL - Oregon Division of State Lands

EPA - U.S. Environmental Protection Agency

NMFS - National Marine Fisheries Service

NWP - Nationwide Permit

PCN - Pre-construction Notification

WQ - Water Quality (referring to Section 401 Water Quality Certification)

- **SPECIAL AQUATIC SITES** include wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes, sanctuaries and refuges as defined at 40 CFR 230.40 through 230.45 (***EPA Guidelines for Specification of Disposal Sites for Dredged or Fill Material***).
- **WETLAND DELINEATIONS** must be done in accordance with the currently acceptable methodology. At present, this is the Corps 1987 Wetlands Delineation Manual and all the guidance that applies to it. For agricultural lands, the Natural Resources Conservation Service (NRCS) has the lead for verifying or doing wetland delineations and determinations. NRCS uses the current edition of the National Food Security Act Manual and its applicable guidance.
- The Oregon Division of State Lands (DSL) requires a “Fill and Removal” permit approval, under ORS 196.800 et seq., for work in waters of the State. To ensure compliance with DSL’s requirements, persons planning to conduct work under a NWP should contact DSL at:

Oregon Division of State Lands

775 Summer St. NE

Salem, OR. 97310-1337

(503) 378-3805

- Obtaining Section 10 and 404 authority under some of the NWPs requires **Notification** to the Corps Portland District as described in National General Condition 13. Some NWPs specify the form of notification as a Joint Corps/DSL permit application. In some situations we will notify other agencies,

such as for activities in essential salmonid habitat and water quality limited streams. Further guidance regarding this matter and addressing agency comments are described in National General NWP condition 13, subparagraph e (Agency Coordination).

- DLCD reviewed the NWPs as provided for under Section 307 (C) of the Coastal Zone Management Act for consistency with the standards for the Oregon Coastal Management Program (OCMP), including: a.) local comprehensive plans and implementing ordinances; b.) statewide planning goals; and c.) various associated State authorities.
- Projects on property owned by the State may require separate authorization from DSL. Applicants should call (503) 378-3805 for additional information on state permits.
- Sanctuaries and Reserves: For all projects proposed for areas within federally designated Marine Sanctuaries or Estuarine Reserves, applicants must contact the agency official responsible for the management of that sanctuary or reserve. Presently, Oregon has one marine sanctuary. The South Slough Marine Sanctuary is generally that portion of Coos Bay estuary that extends south from the Charleston bridge. Contact: Program Coordinator for the South Slough National Estuarine Research Reserve, P.O. Box 5417, Charleston, OR. 97420.

II. GENERAL REGIONAL CONDITIONS

A. APPLICABLE TO ALL ACTIVITIES AUTHORIZED BY NWP

1. **LOCAL COMPREHENSIVE PLANS.** Authorization for projects in Oregon under any nationwide permit is valid only if the proposed project is consistent with, or not subject to, the applicable local comprehensive plan and implementing ordinances. Permits or other authorizations must be obtained, when required, from the applicable local government before work is initiated under any nationwide permit.
2. **STATE REMOVAL-FILL LAW.** Authorization for projects in Oregon under any nationwide permit is valid only if it is authorized under, or not subject to, the statutes implementing the Removal-Fill Law. When required, permits must be obtained under this law from the Oregon Division of State Lands (DSL) before the work is initiated under any nationwide permit.
3. **MITIGATION SITES.** Any activity or work authorized under these NWPs shall not adversely impact previously required federal or state mitigation or restoration efforts.
4. **RIPARIAN VEGETATION PROTECTION & RESTORATION.** Riparian, wetland, and shoreline vegetation in the project area shall be protected from disturbance to maximum extent possible and be restored and enhanced when it is unavoidably disturbed due to activities associated with the authorized work. Highest priority is to replace damaged or destroyed vegetation with native plant materials so that the habitat lost is restored. After five years, the standard for success is generally 80 percent cover with native plant species that replace the habitat type lost or damaged. Planted areas will be temporarily fenced, or otherwise protected from damage, until the vegetation is established.
5. **TIMING OF IN-WATER WORK.** All in-water work, including temporary fills or structures, shall occur within the Oregon Department of Fish and Wildlife's (ODFW) recommended period for in-water work (as specified in the most current version of *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources*). Exceptions to these recommended time periods require specific approval from the Corps permit project manager who will consult with ODFW. On tribal lands the Corps will coordinate exceptions to the timing guidelines with the EPA.
6. **FISH PASSAGE.** Nationwide permit activity affecting "waters of the U.S." must not restrict the passage of aquatic life. Activities that require the placement of culverts, diversion structures, or changes

to the channel morphology must be designed to be consistent with passage standards developed by ODFW and NMFS entitled, ODFW Standards and Criteria for Stream Road Crossings.

7. **TURBIDITY PREVENTION & LIMITATIONS.** The authorized work shall not cause the turbidity of the affected stream or river to exceed 10% above natural turbidity 100 feet downstream of the discharge point. Turbidity shall be frequently monitored during in-water work. Monitoring points shall be 100 feet upstream (representative background), 100 feet downstream, and at the discharge point. A turbidimeter is recommended, however, visual gaging of turbidity is acceptable. Visible turbidity at 100 feet below the discharge would be considered to exceed the standard. The turbidity standard can be exceeded for a maximum of two hours in a 24-hour period **provided** all practicable erosion control measures have been implemented as applicable, including but not limited to:

- a. Placing fill in the water that avoids disturbance to the maximum practicable extent (e.g., placing fill with a backhoe rather than end dumping from a truck);
- b. Preventing constructed fill and related debris from entering the waterway or its adjacent wetlands by hydroseeding of temporary or permanent disturbances. Additional measures may also be necessary such as filter bags, organic or fabric soil detention systems, leave strips, berms or other measures sufficient to prevent the movement of soil and sediment;
- c. Using fabric or plastic covers for soil stockpiles that are left idle during rainy seasons;
- d. Periodic inspections and maintenance of erosion control measures, as necessary, to ensure their continued effectiveness.

8. **HAZARDOUS, TOXIC, & WASTE MATERIALS.** Petroleum products, chemicals, fresh cement, construction, or deleterious waste materials shall not be allowed to enter waters or wetlands. Special attention shall be given to preventing sandblasted material and chipped paint from entering these waters.

9. **FILL MATERIAL QUALITY.** Only clean fill, free of waste and polluted substances, shall be used when it is authorized as part of the permitted work. (Applies to all Section 404 NWP's.)

10. **UPLAND DISPOSAL.** Dredged or excavated material shall be placed upland and prevented from eroding back into waterways and wetlands (except discharges authorized under NWP #16 for return waters from upland contained disposal sites). Seeding with grass may be required when materials are placed permanently or will not be subject to being moved or reshaped for long periods of time. Materials shall not be placed on unstable slopes, and stockpiles shall not exceed 25 feet in height.

11. **ACCESS ROADS & STAGING AREAS.** Construction access roads and associated staging areas shall be protected with a gravel blanket or other suitable material to protect against erosion of sediments into waterways and wetlands.

12. **FUELING MACHINERY.** Machinery refueling is to occur off site or in a confined, designated area to prevent spillage into waterways and wetlands.

13. **BIOENGINEERING TECHNIQUES.** Where appropriate, bioengineering techniques shall be the preferred method for preventing erosion. DSL has described many such techniques in Guidelines On Riparian Restoration: Bioengineering which is included in their 1996 Erosion Control General Authorization. Its application includes, but is not limited to, maintaining/improving fish habitat, wildlife corridors, and riparian vegetation buffers.

14. **INSPECTION OF PERMIT AREA.** In order to ensure that the nationwide permit terms and conditions are met, the permittee must allow representatives of the Corps of Engineers to inspect the authorized activity. Personnel from DEQ, DLCD (for Coastal Zone projects), ODFW, and EPA, are considered to be "representatives". For tribal land projects, EPA is considered an authorized

representative. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative to be on site with the agency representative making the inspection.

15. **FEDERAL THREATENED & ENDANGERED SPECIES.** If at any time during the conduct of work authorized, the permittee becomes aware that a Federally listed threatened or endangered species or species proposed for such designation (as identified under the Federal Endangered Species Act) or the habitat of such species may be affected, the permittee must immediately cease activities, notify the Corps, and not reinstate activities until approved by the Corps of Engineers .

16. **STATE THREATENED, ENDANGERED, & SENSITIVE SPECIES.** No activity is authorized under any NWP which is likely to have an adverse impacts to species listed by the State of Oregon as threatened, endangered, or sensitive species unless approved by the appropriate State agency.

17. **CULTURAL RESOURCES & HUMAN BURIALS.** If at any time during the conduct of work authorized, the permittee becomes aware that human burials, cultural resources, or historic properties (as identified by the Federal historic preservation laws) may be affected, the permittee must immediately cease activities, notify the Corps, and not reinstate activities until approved by the Corps of Engineers.

18. **TERRITORIAL SEAS.** A project proposed to occur partially or completely within Oregon's territorial sea (0-3 nautical miles offshore) requires an individual coastal zone certification from DLCD.

B. CONDITIONS FOR WATER QUALITY LIMITED STREAMS & DESIGNATED ESSENTIAL INDIGENOUS SALMONID HABITAT

The Applicant Must Ensure Compliance with the Following Conditions for projects in Water Quality Limited (WQL) Waters & in Stream Segments Designated as Essential Indigenous Salmonid Habitat under State Rules. The Applicant can verify whether the water body falls into these categories by consulting DEQ for WQL waters, and ODFW for Essential Indigenous Salmonid Habitat.

1. **SEDIMENT SAMPLING REQUIREMENTS.** Sediment sampling, provided existing data is not available, shall be conducted for work in WQL waters having limits on toxic substances (metals or organic chemicals), which have an affinity for sediments, and in WQL waters in the vicinity of a known spill. The sampling will be to test for the listed metals or organics for the designated WQL stream segment where the work is to be done.

2. **SEDIMENT SAMPLING REPORTING.** Sediment sampling and turbidity monitoring results shall be mailed to the Department of Environmental Quality, Executive Building, 811 SW. 6th Av., Portland, OR 97204.

3. **FISH SCREENING.** Where applicable, fish screening will meet the current standards developed by the National Marine Fisheries Service (NMFS) or the ODFW, whichever is more stringent.

4. **NOTIFICATION FOR WATER QUALITY LIMITED STREAMS.** Notification to DEQ (or EPA on tribal or exclusive Federal jurisdiction lands) is required prior to performing work in WQL waters.

5. **NOTIFICATION FOR ESSENTIAL INDIGENOUS SALMONID HABITAT.** Notification to ODFW is required prior to performing work in identified Essential Indigenous Salmonid Habitat

III. NATIONAL CONDITIONS FOR NATIONWIDE PERMITS

A. GENERAL CONDITIONS

The following general conditions must be followed in order for any authorization by a NWP to be valid.

1. NAVIGATION. No activity may cause more than a minimal adverse effect on navigation.
2. PROPER MAINTENANCE. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. EROSION AND SILTATION CONTROLS. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills must be permanently stabilized at the earliest practicable date.
4. AQUATIC LIFE MOVEMENTS. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.
5. EQUIPMENT. Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
6. REGIONAL AND CASE-BY-CASE CONDITIONS. The activity must comply with any regional conditions which may have been added by the Division Engineer (see 33 CFR 330.4(e)) and any case specific conditions added by the Corps or by the state or tribe in its section 401 water quality certification.
7. WILD AND SCENIC RIVERS. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely effect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish & Wildlife Service).
8. TRIBAL RIGHTS. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
9. WATER QUALITY CERTIFICATION. In certain states, an individual Section 401 water quality certification must be obtained or waived (see 33 CFR 330.4(c)).
10. COASTAL ZONE MANAGMENT. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).
11. ENDANGERED SPECIES.
 - (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.
 - (b) Authorization of an activity by a nationwide permit does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (*e.g.*, an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, *etc.*) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act.

Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at <http://www.fws.gov/~r9endspp/endspp.html> and http://kingfish.spp.mnfs.gov/tmcintyr/prot_res.html#ES and Recovery, respectively.

12. **HISTORIC PROPERTIES.** No activity which may affect Historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR 325, appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places [see 33 CFR 330.4(g)].

13. **NOTIFICATION.**

(a) Timing: Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a Pre-Construction Notification (PCN) as early as possible and shall not begin the activity:

- (1) Until notified by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or
- (2) If notified by the District or Division Engineer that an individual permit is required; or
- (3) Unless 30 days (or 45 days for NWP 26 only) have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Notification: The notification must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;
- (3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s) or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity; and

(4) For NWPs 14, 18, 21, 26, 29, 34, and 38, the PCN must also include a delineation of affected special aquatic sites, including wetlands (see paragraph 13(f));

(5) For NWP 21 - Surface Coal Mining Activities, the PCN must include an OSM or state approved mitigation plan.

(6) For NWP 29-Single-Family Housing, the PCN must also include:

- (i) Any past use of this NWP by the individual permittee and/or the permittee's spouse;
- (ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring 0.5 acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 0.5 acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-

tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(7) For NWP 31- Maintenance of Existing Flood Control Projects, the prospective permittee must either notify the District Engineer with a Pre-Construction Notification (PCN) prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided that the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site.

(8) For NWP 33-Temporary Construction, Access, and Dewatering, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

(c) Form of Notification: The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(7) of General Condition 13. A letter may also be used.

(d) District Engineer's Decision: In reviewing the pre-construction notification for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the pre-construction notification to expedite the process and the District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects are minimal, the District Engineer will notify the permittee and include any conditions the DE deems necessary.

Any mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee elects to submit a mitigation plan, the District Engineer will expeditiously review the proposed mitigation plan, but will not commence a second 30-day (or 45-day for NWP 26) notification procedure. If the net adverse effects of the project (with the mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either: (1) that the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submitting a mitigation proposal that would reduce the adverse effects to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions.

(e) Agency Coordination: The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(i) For NWP 14, 21, 26 (between 1 and 3 acres of impact) , 29, 33, 37, and 38. The District Engineer will, upon receipt of a notification, provide immediately, *e.g.*, facsimile transmission, overnight mail or other expeditious manner, a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 5 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 10 calendar days (16 calendar days for NWP 26 PCNs) before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency. The District Engineer will indicate in the administrative record associated with each notification that the

resource agencies' concerns were considered. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(ii) **Optional Agency Coordination.** For NWP 5, 7, 12, 13, 17, 18, 27, 31, and 34, where a Regional Administrator of EPA, a Regional Director of USFWS, or a Regional Director of NMFS has formally requested general notification from the District Engineer for the activities covered by any of these NWPs, the Corps will provide the requesting agency with notification on the particular NWPs. However, where the agencies have a record of not generally submitting substantive comments on activities covered by any of these NWPs, the Corps district may discontinue providing notification to those regional agency offices. The District Engineer will coordinate with the resources agencies to identify which activities involving a PCN that the agencies will provide substantive comments to the Corps. The District Engineer may also request comments from the agencies on a case by case basis when the District Engineer determines that such comments would assist the Corps in reaching a decision whether effects are more than minimal either individually or cumulatively.

(iii) **Optional Agency Coordination, 401 Denial.** For NWP 26 only, where the state has denied its 401 water quality certification for activities with less than 1 acre of wetland impact, the EPA regional administrator may request agency coordination of PCNs between 1/3 and 1 acre. The request may only include acreage limitations within the 1/3 to 1 acre range for which the state has denied water quality certification. In cases where the EPA has requested coordination of projects as described here, the Corps will forward the PCN to EPA only. The PCN will then be forwarded to the Fish and Wildlife Service and the National Marine Fisheries Service by EPA under agreements among those agencies. Any agency receiving the PCN will be bound by the EPA timeframes for providing comments to the Corps.

(f) **Wetlands Delineations:** Wetland delineations must be prepared in accordance with the current method required by the Corps. For NWP 29 see paragraph (b)(6)(iii) for parcels less than 0.5 acres in size. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 30-day period (45 days for NWP 26) will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

(g) **Mitigation:** Factors that the District Engineer will consider when determining the acceptability of appropriate and practicable mitigation include, but are not limited to:

(i) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes;

(ii) To the extent appropriate, permittees should consider mitigation banking and other forms of mitigation including contributions to wetland trust funds, "in lieu fees" to organizations such as The Nature Conservancy, state or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of wetlands. Furthermore, examples of mitigation that may be appropriate and practicable include but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; and replacing the loss of aquatic resource values by creating, restoring, and enhancing similar functions and values. In addition, mitigation must address wetland impacts, such as functions and values, and cannot be simply used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWPs (*e.g.*, for NWP 26, 5 acres of wetlands cannot be created to change a 6-acre loss of wetlands to a 1 acre loss; however, 2 created acres can be used to reduce the impacts of a 3-acre loss.).

14. **COMPLIANCE CERTIFICATION.** Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include: a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions; b. A statement that any required mitigation was completed in accordance with the permit conditions; c. The signature of the permittee certifying the completion of the work and mitigation.

15. **MULTIPLE USE OF NATIONWIDE PERMITS.** In any case where any NWP number 12 through 40 is combined with any other NWP number 12 through 40, as part of a single and complete project, the permittee must notify the District Engineer in accordance with paragraphs a, b, and c on the "Notification" General Condition number 13. Any NWP number 1 through 11 may be combined with any other NWP without notification to the Corps, unless notification is otherwise required by the terms of the NWPs. As provided at 33 CFR 330.6(c) two or more different NWPs can be combined to authorize a single and complete project. However, the same NWP cannot be used more than once for a single and complete project.

B. SECTION 404 ONLY CONDITIONS

In addition to the General Conditions, the following conditions apply only to activities that involve the discharge of dredged or fill material and must be followed in order for authorization by the NWPs to be valid:

1. **WATER SUPPLY INTAKES.** No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.
2. **SHELLFISH PRODUCTION.** No discharge of dredged or fill material may occur in areas of concentrated shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by NWP 4.
3. **SUITABLE MATERIAL.** No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
4. **MITIGATION.** Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site-(i.e., on-site), unless the District Engineer approves a compensation plan that the District Engineer determines is more beneficial to the environment than on-site minimization or avoidance measures.
5. **SPAWNING AREAS.** Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.
6. **OBSTRUCTION OF HIGH FLOWS.** To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).
7. **ADVERSE IMPACTS FROM IMPOUNDMENTS.** If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.
8. **WATERFOWL BREEDING AREA.** Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
9. **REMOVAL OF TEMPORARY FILLS.** Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

IV. NATIONWIDE PERMITS & THEIR SPECIFIC REGIONAL CONDITIONS

1. **AIDS TO NAVIGATION.** The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard. (See 33 CFR Part 66, Chapter I, Subchapter C). (Section 10).

401 Certification. Not applicable.

CZM Determination. Concurrence granted.

2. **STRUCTURES IN ARTIFICIAL CANALS.** Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.5(g)). (Section 10).

401 Certification. Not applicable.

CZM Determination. Concurrence granted.

3. **MAINTENANCE.** The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it on the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This NWP authorizes the repair, rehabilitation, or replacement of those structures destroyed by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced or under contract to commence within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the District Engineer, provided the permittee can demonstrate finding, contract, or other similar delays. Maintenance dredging and beach restoration are not authorized by this NWP. (Sections 10 and 404)

Special Regional Condition. Deviation from the original permitted activity (i.e., increase in the footprint or size, change in location, addition of structures, or change in use) shall require that the applicant notify the District Engineer with a joint Corps/DSL permit application. Copies shall be sent to the DSL, the applicable local government agency, and the DLCD for Coastal Zone projects, unless the project is on tribal land.

State/EPA 401 Certification. Approved when the above special condition is met.

CZM Consistency Determination. Concurrence granted provided that those projects with deviations, located in the coastal zone, require notification of DLCD and individual coastal zone certification concurrence. Those projects with more than minimal impacts will require an individual permit and an individual concurrence from DLCD.

4. **FISH AND WILDLIFE HARVESTING, ENHANCEMENT, AND ATTRACTION DEVICES AND ACTIVITIES.** Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots lobster traps, duck blinds, clam and oyster digging; and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP authorizes shellfish seeding provided this activity does not occur in wetlands or sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. Sections 10 and 404).

Special Regional Conditions.

- ❶ Commercial harvest of shellfish by means of a mechanical or hydraulic escalator type of equipment is not authorized by this permit.
- ❷ Any project that requires dredging or filling in a Natural Management Unit of an estuary, other than incidental dredging or use of removable harvest equipment, require an individual coastal zone certification concurrence.
- ❸ For projects involving commercial oyster cultivation, authorization under this permit is not valid until the applicant obtains authorization, if required, from the Oregon Department Agriculture.

State/EPA 401 Certification. Approved when the above special conditions are met.

CZM Consistency Determination. Concurrence granted when the above special conditions are met.

5. SCIENTIFIC MEASUREMENT DEVICES. Devices whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards and further for discharges of 10 to 25 cubic yards provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. (Sections 10 and 404)

State/EPA 401 Certification. Approved.

CZM Consistency Determination. Concurrence granted.

6. SURVEY ACTIVITIES. Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey and sampling, and historic resources surveys. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration is not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling muds and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404)

Special Regional Condition. A joint Corps/DSL permit application is required when the activity involves more than 10 cubic yards.

State/EPA 401 Certification. Partially denied. An individual 401 certification is required when the activity involves more than 10 cubic yards.

CZM Consistency Determination. Partial concurrence granted for minor surveys such as hard-held auguring, soil surveying or sampling, wetland delineations, water quality testing, and water level recording, if 401 certification conditions are satisfied. Individual coastal zone consistency concurrence is required for other activities, such as seismic explorations and discharges of drilling muds or cuttings.

7. OUTFALL STRUCTURES. Activities related to construction of outfall structures and associated intake structures where the effluent from the out fall is authorized, conditionally authorized, or specifically exempted, or are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act), provided that the nationwide permittee notifies the District Engineer in accordance with the "Notification" general condition. (Also see 33 CFR 330.1(e)). Intake structures per se are not included—only those directly associated with an outfall structure. (Sections 10 and 404)

Special Regional Condition. Individual coastal zone consistency concurrence must be obtained for any project located in estuarine or ocean waters in the coastal zone. Coastal zone concurrence is granted for all other locations in the coastal zone area after individual 401 Certification is obtained from the DEQ.

State/EPA 401 Certification. Denied.

CZM Consistency Determination. Partial concurrence granted when the above special condition is met.

8. **OIL AND GAS STRUCTURES.** Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Minerals Management Service. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(1). (Where such limits have not been designated, or where changes are anticipated, District Engineers will consider asserting discretionary authority in accordance with 33 CFR 330.4(e) and will also review such proposals to ensure they comply with the provisions of the fairway regulations in 33 CFR 322.5(1). Any Corps review under this permit will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f)). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR Part 334; nor will such structures be permitted in EPA or Corps designated dredged material disposal areas. (Section 10)

401 Certification. Not applicable.

CZM Consistency Determination. Concurrence denied.

9. **STRUCTURES IN FLEETING AND ANCHORAGE AREAS.**

Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate storage of vessels where such areas have been established for that purpose by the U.S. Coast Guard. (Section 10). Mooring Buoys. Non-commercial, single-boat, mooring buoys. (Section 10)

401 Certification. Not applicable.

CZM Consistency Determination. Concurrence granted.

10. **MOORING BUOYS.** Non-commercial, single-boat, mooring buoys. (Section 10)

Special Regional Condition. Buoys to moor boats for longer than 24 hours in Natural Management Units of estuaries require an individual coastal zone certification.

401 Certification. Not applicable.

CZM Consistency Determination. Concurrence granted when the above special condition is met.

11. **TEMPORARY RECREATIONAL STRUCTURES.** Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

Special Regional Condition. Temporary recreation structures which require, or result in, a modification of an estuarine area or resources require an individual coastal zone certification concurrence.

401 Certification. Not applicable.

CZM Consistency Determination. Concurrence granted when the above special condition is met.

12. **UTILITY LINE DISCHARGES.** Discharges of dredged or fill material associated with excavation, backfill or bedding for utility lines, including outfall and intake structures, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and

television communication. The term "utility line" does not include activities which drain a water of the United States, such as drainage tile; however, it does apply to pipes conveying drainage from another area. This NWP authorizes mechanized landclearing necessary for the installation of utility lines, including overhead utility lines, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained. However, access roads, temporary or permanent, or foundations associated with overhead utility lines are not authorized by this NWP. Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the United States, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The DE may extend the period of temporary side-casting not to exceed a total of 180 days, where appropriate. The area of waters of the United States that is disturbed must be limited to the minimum necessary to construct the utility line. In wetlands, the top 6" to 12" of the trench should generally be backfilled with topsoil from the trench. Excess material must be removed to upland areas immediately upon completion of construction. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line. (See 33 CFR Part 322). Notification: The permittee must notify the district engineer in accordance with the "Notification" general condition, if any of the following criteria are met:

- a) Mechanized landclearing in a forested wetland;
- b) A Section 10 permit is required for the utility line;
- c) The utility line in waters of the United States exceeds 500 feet; or,
- d) The utility line is placed within a jurisdictional area (*i.e.*, a water of the United States), and it runs parallel to a streambed that is within that jurisdictional area. (Sections 10 and 404)

Special Regional Conditions.

- ❶ Installation of new sewer lines or new sewer line extensions outside an urban growth boundary or unincorporated community boundary shall not be initiated prior to an applicant's receipt of final approval for such work from the applicable local government.
- ❷ Fish habitat and passage shall be protected by ensuring that the work does not create an impediment to fish passage, and that there is no change to stream gradients.
- ❸ Heavy equipment shall not be operated in the active flowing stream, unless specifically authorized. Work may be authorized if necessary in the interest of safety or due to site conditions that prohibit work from the bank. Heavy equipment in wetlands must be placed on mats or other measures must be taken to minimize damage to wetland resources. On tribal lands, coordination of exceptions will be directly with EPA.
- ❹ Wetlands adjacent to the site shall be clearly flagged, or otherwise appropriately identified, to prevent damage or loss of that resource.
- ❺ Pre-construction hydrology supporting wetland vegetation must be maintained (*i.e.*, by means such as trench plugs, reconstructed impervious soil layers, etc.). The upper 12 inches of topsoil shall be removed and stockpiled separately from subsurface soils and replaced at the project's completion.
- ❻ Mitigation, where practical, shall be required in accordance with Oregon Guidelines for Compensatory Wetland Mitigation.

State/EPA 401 Certification. Approved when above special conditions are met.

CZM Consistency Determination. Partial concurrence granted when the above special conditions are met. Projects located in an estuary (defined in the Oregon Coastal Zone Program) require an individual coastal zone certification concurrence.

13. BANK STABILIZATION. Bank stabilization activities necessary for erosion prevention provided:

- a. No material is placed in excess of the minimum needed for erosion protection;
- b. The bank stabilization activity is less than 500 feet in length;

- c. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high watermark or the high tide line;
- d. No material is placed in any special aquatic site, including wetlands;
- e. No material is of the type or is placed in any location or in any manner so as to impair surface water flow into or out of any wetland area;
- f. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas) ; and,
- g. The activity is part of a single and complete project. Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard permitting foot may be authorized if the permittee notifies the District Engineer in accordance with the "Notification general condition and the District Engineer determines the activity complies with the other terms and conditions of the NWP and the adverse environmental effects are minimal both individually and cumulatively. (Sections 10 and 404)

Special Regional Conditions.

- ❶ There shall be no change to stream gradients.
- ❷ Where practicable, fish habitat enhancement measures will be incorporated into the design, such as willow sprigs in rock applications, fish resting areas, and vegetative stabilization.
- ❸ Work such as retaining walls, bulkheads, gabions or similar vertical structures require individual 401 and/or coastal zone certification, as appropriate.
- ❹ Riprap material shall be clean, durable, or angular rock which is predominantly course or heavy duty material. Filter fabric is to be placed under the riprap where the surface on which it is placed would otherwise leach or erode into the water. Broken concrete is not permitted.
- ❺ The use of other materials for bank stabilization, such as tires, wire, and steel posts, are not authorized.
- ❻ Heavy equipment shall not be operated in the active flowing stream, unless specifically authorized. Work may be authorized if necessary in the interest of safety or due to site conditions that prohibit work from the bank. Heavy equipment in wetlands must be placed on mats or other measures must be taken minimize damage to wetland resources. On tribal lands coordination of exceptions will be directly with EPA.
- ❼ Compatible land use management practices and non-structural techniques of bank stabilization shall be preferred.
- ❽ A joint Corps/DSL permit application is required when projects exceed 250 ft. in length.

State/EPA 401 Certification. Partially denied. An individual 401 certification is required for projects greater than 250 feet.

CZM Consistency Determination. Partial concurrence granted for coastal zone projects, except for those located along ocean shore areas. Concurrence is granted for projects that are less than 250 feet when the above conditions are met. Individual coastal zone certification concurrence from DLCD is required for all projects located along the ocean shore and for any project that exceeds 250 feet.

14. ROAD CROSSING. Fills for roads crossing ,waters of the United States (including wetlands and other special aquatic sites) provided the activity meets all of the following criteria:

- a. The width of the fill is limited to the minimum necessary for the actual crossing;
- b. The fill placed in waters of the United States is limited to a filled area of no more than 1/3 acre. Furthermore, no more than a total of 200 linear feet of the fill for the roadway can occur in special aquatic sites, including wetlands;

- c. The crossing is culverted, bridged or otherwise designed to prevent the restriction of, and to withstand, expected high flows and tidal flows, and to prevent the restriction of low flows and the movement of aquatic organisms;
- d. The crossing, including all attendant features, both temporary and permanent, is part of a single and complete project for crossing of a water of the United States; and,
- e) For fills in special aquatic sites, including wetlands, the permittee notifies the District Engineer in accordance with the "Notification" general condition. The notification must also include a delineation of affected special aquatic sites, including wetlands.

This NWP may not be combined with NWP 18 or NWP 26 for the purpose of increasing the footprint of the road crossing. Some road fills may be eligible for an exemption from the need for a Section 404 permit altogether (see 33 CFR 323.4). Also, where local circumstances indicate the need, District Engineers will define the term "expected high flows" for the purpose of establishing applicability of this NWP. (Sections 10 and 404)

Special Regional Conditions.

- ❶ Road crossings and/or bridges shall have structures/features that direct drainage into biofiltration swales in order to prevent erosion of soil into the waterway and to minimize the pollutants entering streams and wetlands.
- ❷ Culvert and bridge spans shall be designed and/or sized to withstand and pass expected high water flows. (Also refer to condition 6 in the "Section 404 Only Conditions" in part III. B. of this notice and in the December 13, 1996 Federal Register.)

State/EPA 401 Certification. Approved when the above special conditions are met.

CZM Consistency Determination. Partial concurrence granted for road projects when the above special conditions are met. Individual coastal zone certification concurrence from DLCD is required for projects that are located in an estuary (as defined in the Oregon Coastal Zone Management Program).

15. COAST GUARD APPROVED BRIDGES. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require an individual or regional Section 404 permit. (Section 404)

State/EPA 401 Certification. Approved.

CZM Consistency Determination. Concurrence denied.

16. RETURN WATER FROM UPLAND CONTAINED DISPOSAL AREAS. Return water from an upland, contained dredged material disposal area. The dredging itself may require a Section 404 permit (33 CFR 323.2(d), but will require a Section 10 permit if located in navigable waters of the United States. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 23 CFR 323.2 (d) even though the disposal itself occurs on the upland and thus does not require a Section 404 permit. This NWP satisfies the technical requirement for a Section 404 permit for the return water where the quality of the return water is controlled by the state through the Section 401 certification procedures. (Section 404)

State/EPA 401 Certification. Denied.

CZM Consistency Determination. Concurrence granted after an individual 401 certification is received from the DEQ or EPA (on tribal lands).

17. **HYDROPOWER PROJECTS.** Discharges of dredged or fill material associated with (a) small hydropower projects at existing reservoirs where the project, which includes the fill, are licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 KW; and the permittee notifies the District Engineer in accordance with the “Notification” general condition; or (b) hydropower projects for which the FERC has granted an exemption from licensing pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended; provided the ‘Permittee notifies the District Engineer in accordance with the “Notification” general condition. (Section 404)

State/EPA 401 Certification. Denied.

CZM Consistency Determination. Concurrence denied.

18. **MINOR DISCHARGES.** Minor discharges of dredged or fill material into all waters of the United States provided:

- a. The quantity of discharged material and the volume of excavated area does not exceed 25 cubic yards below the plane of the OHW or the High Tide Line;
- b. The discharge, including any excavated area, will not cause the loss of more than 1/10 acre of a special aquatic site, including wetlands. *For the purposes of this NWP, the acreage limitation includes the filled area and excavation area plus special aquatic sites that are adversely affected by flooding and special aquatic sites that are drained so that they would no longer be a water of the United States as a result of the project;*
- c. If the discharge, including any excavated area, exceeds 10 cubic yards or the discharge is in a special aquatic site, including wetlands, the permittee notifies the District Engineer in accordance with the “Notification” general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. (Also see 33 CFR 330.1(e)); and
- d. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project and is not placed for the purpose of a stream diversion. (Sections 10 and 404)

Special Regional Condition. Individual coastal zone certification concurrence from DLCD is required for projects that are located in an estuary (as defined in the Oregon Coastal Zone Management Program).

State/EPA 401 Certification. Approved.

CZM Consistency Determination. Partial concurrence granted when the above special condition is met.

19. **MINOR DREDGING.** Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (i.e., Section 10 actions) as part of a single and complete project. This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation, anadromous fish spawning areas, or wetlands or, the connection of canals or other artificial waterways to navigable waters of the United States (see Section 33 CFR 322. 5 (g)) .(Section 10 and 404)

Special Regional Conditions.

- ❶ For projects located in an estuary (as defined under the Oregon Coastal Zone Management Program), dredging must be necessary to maintain an existing project or otherwise be consistent with the requirement of the local estuary management plan.
- ❷ Dredged materials shall be disposed of at an upland site.

State/EPA 401 Certification. Approved when the above special conditions are met.

CZM Consistency Determination. Concurrence granted when the above special conditions are met.

20. OIL SPILL CLEANUP. Activities required for the containment and cleanup of oil and hazardous substances, which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan, (40 CFR Part 300), provided that the work is done in accordance with the Spill Control and Counter measure Plan required by 40 CFR Part 112.3 and any existing State contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. (Sections 10 and 404)

State/EPA 401 Certification. Approved.

CZM Consistency Determination. Concurrence granted.

21. SURFACE COAL MINING ACTIVITIES. Activities associated with surface coal mining activities provided they are authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the Permittee notifies the District Engineer in accordance with the "Notification" general condition. The notification must include an OSM or state approved mitigation plan. The Corps, at the discretion of the District Engineer, may require a bond to ensure success of the mitigation, if no other Federal or state agency has required one. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. (Also see 33 CFR 330.1(e)) (Sections 10 and 404.)

State/EPA 401 Certification. Denied.

CZM Consistency Determination. Concurrence denied.

22. REMOVAL OF VESSELS. Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize the removal of vessels listed or determined eligible for listing on the National Register of Historic Places unless the District Engineer is notified and indicates that there is compliance with the "Historic Properties" general condition. This NWP does not authorize maintenance dredging, shoal removal, or river bank snagging. Vessel disposal in waters of the United States may need a permit from EPA (see 40 CFR 229-3). (Sections 10 and 404)

401 Certification. No action on certification taken. Considered not applicable by DEQ.

CZM Consistency Determination. Concurrence granted.

23. APPROVED CATEGORICAL EXCLUSIONS. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part by another Federal agency or department where that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the office of the Chief of Engineers (ATTN: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Prior to approval for purposes of this NWP of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this NWP. (Sections 10 and 404)

State/EPA 401 Certification. Denied.

CZM Consistency Determination. Concurrence denied.

24. **ADMINISTERED SECTION 404 PROGRAM.** Any activity permitted by a state administering its own Section 404 permit program pursuant to 33 U.S.C. 1344(g) (1) is permitted to Section 10 of the Rivers and Harbors Act of 1899. Those activities which do not involve a Section 404 state permit are not included in this NWP, but certain structures will be exempted by Section 154 of Public Law 94-587, 90 Stat. 2917 (33 U.S.C. 1) [see 33 CFR 322.3(a)(2)]. (Section 10)].

401 Certification. Not currently applicable.

CZM Consistency Determination. Not currently applicable.

25. **STRUCTURAL DISCHARGES.** Discharges of material such as concrete, sand 'rock etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, homes, parking areas, storage areas and other such structures. Housepads or other building pads are also not included in this NWP. The structure itself may require a Section 10 permit if located in navigable waters of the United States. (Section 404)

State/EPA 401 Certification. Approved.

CZM Consistency Determination. Concurrence granted.

26. **HEADWATERS AND ISOLATED WATERS DISCHARGES.**

Discharges of dredged or fill material into headwaters and isolated waters provided that the activity meet all of the following criteria:

- a. The discharge does not cause the loss of more than 3 acres of waters of the United States nor cause the loss of waters of the United States for a distance greater than 500 linear feet of the steambed;
- b. For discharges causing the loss of greater than 1/3 acre of waters of the United States, the permittee notifies the District Engineer in accordance with the "Notification" general condition;
- c. For discharges causing a loss of 1/3 acre or less of waters of the United States the permittee must submit a report within 30 days of completion of the work, containing the information listed below;
- d. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands (Also see 33 CFR 330.1(e)); and
- e. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project.

Note: this NWP will expire on February 11, 1999.

For the purposes of this NWP, the acreage of loss of waters of the United States includes the filled area plus waters of the United States that are adversely affected by flooding, excavation or drainage as a result of the project. The 3 acre and 1/3 acre limits of NWP 26 are absolute, and cannot be increased by any mitigation plan offered by the applicant or required by the District Engineer. Whenever any other NWP is used in conjunction with this NWP, the total acreage of impacts to waters of the United States of all NWPs combined, can not exceed 3 acres.

Subdivisions: For any real estate subdivision created or subdivided after October 5, 1984, a notification pursuant to subsection (b) of this NWP is required for any discharge which would cause the aggregate total loss of waters of the United States for the entire subdivision to exceed 1/3 acre. Any discharge in any real estate subdivision which would cause the aggregate total loss of waters of the United States in the subdivision to exceed 3 acres is not authorized by this NWP; unless the District Engineer exempts a particular subdivision or parcel by making a written determination that: (1) the individual and cumulative adverse environmental effects would be minimal and the property owner had, after October 5,

1984, but prior to February 11, 1997, committed substantial resources in reliance on NWP 26 with regard to a subdivision, in circumstances where it would be inequitable to frustrate the property owner's investment-backed expectations, or (2) that the individual and cumulative adverse environmental effects would be minimal, high quality wetlands would not be adversely affected, and there would be an overall benefit to the aquatic environment. Once the exemption is established for a subdivision, subsequent lot development by individual property owners may proceed using NWP 26. For purposes of NWP 26, the term "real estate subdivision" shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial or other real estate subdivision, including all parcels and parts thereof.

Report: For discharges causing the loss of 1/3 acre or less of waters of the United States the permittee must submit a report within 30 days of completion of the work, containing the following information:

- a) Name, address, and telephone number of the permittee;
 - b) Location of the work;
 - c) Description of the work; and,
 - d) Type and acreage (or square feet) of the loss of waters of the United States (e.g., 1/10 acre of marsh and 50 Square feet of a stream.)
- (Section 404)

Special Regional Conditions.

- ❶ The discharge of dredged or fill material shall not affect more than two acres of waters, including wetlands. An individual permit is required for discharges more than two acres.
- ❷ Wetlands fill which cannot be avoided due to unavailability of feasible and prudent alternatives shall be designed to insure the impacts are minimized.
- ❸ Mitigation, where practical, shall be required in accordance with Oregon Guidelines for Compensatory Wetland Mitigation.
- ❹ All feasible and prudent alternatives to avoid and/or minimize wetland impacts shall be considered by the applicant.
- ❺ Storm water run off from impervious surfaces (roads, parking lots, etc.) shall be first treated by a biofiltration swale or other treatment facility before entering wetland or streams to minimize pollutants entering those water bodies.
- ❻ Notification to the district engineer will be by means of a joint Corps/DSL permit application for projects that affect more than 1/3 acre.

State/EPA 401 Certification. Partially denied. An individual 401 Certification is required for projects affecting more than 1/3 acre.

CZM Consistency Determination. Partial concurrence granted when the above special conditions are met. An individual coastal zone certification concurrence must be obtained from the DLCD for projects anywhere in the coastal zone when the wetland impact exceeds 1/3 acre.

27. WETLAND AND RIPARIAN RESTORATION AND CREATION ACTIVITIES. Activities in waters of the United States associated with the restoration of former non-tidal wetlands and riparian areas, the enhancement of degraded wetlands and riparian areas, and creation of wetlands and riparian areas; (i) on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland restoration or creation agreement between the landowner and the U.S. Fish and Wildlife Service or the Natural Resources Conservation Service (NRCS) or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or (ii) on any Federal land; or (iii) on reclaimed surface coal mined lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining or the applicable state agency. (The future reversion does not apply to wetlands created, restored or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank.); or (iv) on any public

or private land, provided the permittee notifies the District Engineer in accordance with the “Notification” general condition. Such activities include, but are not limited to: installation and maintenance of small water control structures, dikes, and berms; backfilling of existing drainage ditches; removal of existing drainage structures; construction of small nesting islands; plowing or disking for seed bed preparation; and other related activities. This NWP applies to restoration projects that serve the purpose of restoring “natural” wetland hydrology, vegetation, and function to altered and degraded non-tidal wetlands and “natural” functions of riparian areas. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed.

Reversion. For restoration, enhancement and creation projects conducted under paragraphs (ii) and (iv), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit at that time would be required for any reversion. For restoration, enhancement and creation projects conducted under paragraphs (i) and (iii), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (*i.e.*, prior to the restoration, enhancement, or creation activities) within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. The five year reversion limit does not apply to agreements without time limits reached under paragraph (i). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Prior to any reversion activity the permittee or the appropriate Federal or state agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted back to its prior physical condition, it will be subject to whatever the Corps regulatory requirements will be at that future date. (Sections 10 and 404)

Special Regional Condition. The conditions of DSL’s General Authorization for Wetland Restoration and Enhancement Projects Within the State of Oregon and the conditions of Portland District’s Regional Permit for Wetlands Restoration and Enhancement and shall apply for projects authorized under this NWP.

State/EPA 401 Certification. Approved when the above special condition is met.

CZM Consistency Determination. Concurrence granted when the above special condition is met.

28. MODIFICATIONS OF EXISTING MARINAS. Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips or dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. (Section 10)

Special Regional Condition. Adverse impacts to area that support eelgrass (*Zostera spp*) or macroalgae are not authorized.

401 Certification. Not applicable.

CZM Consistency Determination. Concurrence granted when the above special condition is met.

29. SINGLE-FAMILY HOUSING. Discharges of dredged or fill material into non-tidal waters of the United States, including non-tidal wetlands for the construction or expansion of a single-family home and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an individual permittee provided that the activity meets all of the following criteria:

- a. The discharge does not cause the loss of more than ½ acre of no tidal waters of the United States, including non-tidal wetlands;
- b. The permittee notifies the District Engineer in accordance with the “Notification” general condition;

- c. The permittee has taken all practicable actions to minimize the onsite and offsite effects of the discharge. For example, the location of the home may need to be adjusted onsite to avoid flooding of adjacent property owners;
- d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of ½ acre for the entire subdivision;
- e. An individual may use this NWP only for a single-family home for a personal residence;
- f. This NWP may be used only once per parcel;
- g. This NWP may not be used in conjunction with NWP 14, NWP 18, or NWP 26, for any parcel; and
- h. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, *etc.*, to preclude water quality degradation due to erosion and sedimentation.

For the purposes of this NWP, the acreage of loss of waters of the United States includes the filled area previously permitted, the proposed filled area, and any other waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. Whenever any other NWP is used in conjunction with this NWP, the total acreage of impacts to waters of the United States of all NWPs combined, can not exceed 1/2 acres. This NWP authorizes activities only by individuals; for this purpose, the term "individual" refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this NWP, a parcel of land is defined as "the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, *etc.*) by the same individual (and/or that individual's spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual (and/or that individual's spouse) in any form of ownership". (Sections 10 and 404)

State/EPA 401 Certification. Denied.

CZM Consistency Determination. Concurrence denied.

30. MOIST SOIL MANAGEMENT FOR WILDLIFE. Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on non-tidal Federally-owned or managed and State-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to: the repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and plowing or discing to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, *etc.*, to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, *etc.* associated with the management areas. This NWP does not authorize converting wetlands to uplands, impoundments or other open water bodies. (Section 404)

Special Regional Conditions. Only sediments considered suitable for open water disposal shall be considered acceptable for use.

State/EPA 401 Certification. Approved when the above special condition is met.

CZM Consistency Determination. Concurrence granted.

31. MAINTENANCE OF EXISTING FLOOD CONTROL FACILITIES. Discharges of dredged or fill material for the maintenance of existing flood control facilities, including debris basins, detention/detention basins, and channels that were (i) previously authorized by the Corps by individual permit, general permit, or by 33 CFR 330.3 and constructed or (ii) constructed by the Corps and transferred to a local sponsor for operation and maintenance. The maintenance is limited to that approved in a maintenance baseline determination made by the district engineer (DE). The prospective permittee will provide the DE with sufficient evidence for the DE to determine the approved and constructed baseline. Subsequent to the determination of the maintenance baseline and prior to any maintenance work, the permittee must notify the DE in accordance with the “Notification” general condition.

All dredged material must be placed in an upland site or a currently authorized disposal site in waters of the United States, and proper siltation controls must be used. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses. (Activities that involve only the cutting and removing of vegetation above the ground, *e.g.*, mowing, rotary cutting, and chainsawing, where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material, does not require a Section 404 permit in accordance with 33 CFR 323.2(d)(2)(ii)). Only constructed channels within stretches of natural rivers that have been previously authorized as part of a flood control facility could be authorized for maintenance under this NWP.

Maintenance Baseline. Upon receipt of sufficient evidence, the DE will determine the maintenance baseline. The maintenance baseline is the existing flood control project that the DE has determined can be maintained under this NWP, subject to any case-specific conditions required by the DE. In determining the maintenance baseline, the DE will consider the following factors: the approved facility, the actual constructed facility, the Corps constructed project that was transferred, the maintenance history, if the facility has been functioning at a reduced capacity and for how long, present vs. original flood control needs, and if sensitive/unique functions and values may be adversely affected. Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR Part 330.5. This NWP can not be used until the DE determines the maintenance baseline and the need for mitigation and any regional or activity-specific conditions. The maintenance baseline will only be determined once and will remain valid for any subsequent reissuance of this NWP. However, if the project is effectively abandoned or reduced due to lack of proper maintenance, a new determination of a maintenance baseline would be required before this NWP could be used for subsequent maintenance.

Mitigation. In determining the need for mitigation, the DE will consider the following factors: any original mitigation required, the current environmental setting, and any adverse effects of the maintenance project that were not mitigated in the original construction. The DE will not delay needed maintenance for completion of any required mitigation, provided that the DE and the applicant establish a schedule for the identification, approval, development, construction and completion of such required mitigation. (Sections 10 and 404)

Special Regional Conditions.

- ❶ All dredged materials shall be disposed at an upland site.
- ❷ Expansion of flood control facilities, such as increasing the height, width, or length of an existing structure is not authorized

State/EPA 401 Certification. Denied.

CZM Consistency Determination. Concurrence granted when the above special conditions are met.

32. COMPLETED ENFORCEMENT ACTIONS. Any structure, work or discharge of dredged or fill material, remaining in place, or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

- i. The terms of a final Corps non-judicial settlement agreement fully resolving a violation of section 404 of the Clean Water Act (CWA) and/or section 10 of the Rivers and Harbors Act of 1899 provided that:
 - a) The unauthorized activity affected no more than 5 acres of nontidal wetlands or 1 acre of tidal wetlands;
 - b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this nationwide permit ; and
 - c) The District Engineer issues a verification letter authorizing the activity subject to the terms and conditions of this nationwide permit and the settlement agreement, including a specified completion date; or
- ii. The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under section 404 of the CWA and/or section 10 of the Rivers and Harbors Act of 1899.

For both (i) or (ii) above, compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement or fails to complete the work by the specified completion date. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Prior to reaching any settlement agreement the Corps will ensure compliance with the provisions of 33 CFR Part 326 and 33 CFR 330.6(d)(2) and (e). (Sections 10 and 404)

Special Regional Condition. Authorization under this permit shall not relieve the applicant from the obligation to comply with state and local laws, regulations applicable state court decisions, consent decrees, or settlement agreements.

State 401 Certification. Approved when the above special regional condition is met.

CZM Consistency Determination. Concurrence granted when the above special condition is met.

33. TEMPORARY CONSTRUCTION, ACCESS AND DEWATERING. Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard, or for other construction activities not subject to the Corps or U.S. Coast Guard regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer that it will not cause more than minimal adverse effects on aquatic resources. Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas so as to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the United States. (See 33 CFR Part 322). The permittee must notify the District Engineer in accordance with the "Notification" general condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The District Engineer will add special conditions, where necessary, to ensure that adverse environmental effects are minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (*e.g.*, construction mats in wetlands where practicable.). (Sections 10 and 404)

State/EPA 401 Certification. Partially denied. An individual 401 Certification is required for projects that: a) impair surface water flow into or out of a wetland or, b) affect more than ½ (one-half) acre of waters of the U.S.

CZM Consistency Determination. Partial concurrence granted, with the exception that individual coastal zone certification concurrence is required by DLCD for work that is located in an estuary (as defined in the Oregon Coastal Zone Management Program.). All other work in the coastal zone is approved provided a 401 Certification is approved.

34. CRANBERRY PRODUCTION ACTIVITIES. Discharges of dredged or fill material for dikes berms, pumps, water control structures or leveling of cranberry beds associated ,with expansion, enhancement, or modification activities at existing cranberry production operations provided that the activity meets all of the following criteria:

- a. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, does not exceed 10 acres of ,waters of the United States, including wetlands;
- b. The permittee notifies the District Engineer in accordance with the “Notification” general condition. The notification must include a delineation of affected special aquatic sites, including wetlands; and
- c. The activity does not result in a net loss of wetland acreage.

This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid. (Section 404)

State/EPA 401 Certification. Denied.

CZM Consistency Determination. Concurrence denied.

35. MAINTENANCE DREDGING OF EXISTING BASINS. Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marina basins or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less, provided the dredged material is disposed of at an upland site and proper siltration controls are used. (Section 10)

Special Regional Conditions.

- ❶ Prior to performing any maintenance dredging, the applicant must complete dredged material sampling and analyses that are required by Federal, State, or local agencies. (Tribes must meet Federal requirements only.) The applicant must contact the Portland District Corps of Engineers Regulatory Branch to verify testing requirements.
- ❷ The applicant must notify the District Engineer by means of a joint Corps/DSL permit application which shall include:
 - a) the results of any required testing, and
 - b) the location of the upland disposal area.

401 Certification. Not applicable.

CZM Consistency Determination. Concurrence granted when an individual 401 Certification is obtained.

36. BOAT RAMPS. Activities required for the construction of boat ramps provided:

- a. The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or placement of precast concrete planks or slabs. (Unsuitable material that causes unacceptable chemical pollution or is structurally unstable is not authorized);
- b. The boat ramp does not exceed 20 feet in width;
- c. The base material is crushed stone, gravel or other suitable material;
- d. The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and,
- e. No material is placed in special aquatic sites, including wetlands.

Dredging to provide access to the boat ramp may be authorized by another NWP, regional general permit, or individual permit pursuant to Section 10 if located in navigable waters of the United States. (Sections 10 and 404)

Special Regional Conditions.

- ❶ Use of concrete planks or slabs is preferred. Concrete may be poured on site provided it does not come in contact with water until it is cured.
- ❷ Only one boat ramp per contiguous property ownership is authorized by this NWP.

State/EPA 401 Certification. Approved when the above special conditions are met.

CZM Consistency Determination. Concurrence granted when the above special conditions are met.

37. EMERGENCY WATERSHED PROTECTION AND REHABILITATION. Work done by or funded by the Natural Resources Conservation Service qualifying as an “exigency” situation (requiring immediate action) under its Emergency Watershed Protection Program (7 CFR Part 624) and work done or funded by the Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13) provided the District Engineer is certified in accordance with the “Notification” general condition. (Also see 33 CFR 330.1(e)). (Sections 10 and 404)

State/EPA 401 Certification. Approved.

CZM Consistency Determination. Concurrence denied.

38. CLEANUP OF HAZARDOUS AND TOXIC WASTE. Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority provided the permittee notifies the District Engineer in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste. Activities undertaken entirely on a CERCLA site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. (Sections 10 and 404)

State/EPA 401 Certification. Partially denied for cleanup activities unless authorized by the DEQ or the EPA, Region X. An individual 401 Certification is required for all other cleanup activities.

CZM Consistency Determination. Concurrence granted.

39. **RESERVED.**

40. **FARM BUILDINGS.** Discharges of dredged or fill material into jurisdictional wetlands (but not including prairie potholes, playa lakes, or jurisdictional wetlands vernal pools) that were in agricultural crop production prior to December 23, 1985 (i.e., farmed wetlands) for foundations and building pads for buildings. The discharge will be limited to the minimum necessary but will in no case exceed 1 acre (see the “Mitigation” Section 404 only condition). The permittee must notify the District Engineer in accordance with “Notification” general condition for any farm building within 500 linear feet of any flowing water. (Section 404)

State 401 Certification. Denied.

CZM Consistency Determination. Concurrence denied.